



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/766,539	01/19/2001	Robert E. Dvorak	BLFR 1005-1	9951
22470	7590	10/31/2005	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP			VAN DOREN, BETH	
P O BOX 366			ART UNIT	PAPER NUMBER
HALF MOON BAY, CA 94019			3623	

DATE MAILED: 10/31/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/766,539

Applicant(s)

DVORAK, ROBERT E.

Examiner

Beth Van Doren

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-119 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-119 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-23 and 116, drawn to an improved decision support system that includes one or more additional analysis programs that generate at least two analyses, classified in class 705, subclass 10.
  - II. Claims 24-46, drawn to an improved decision support system that utilizes an analysis program to generate data reported in an open to buy report, classified in class 705, subclass 10.
  - III. Claims 47-69, drawn to an improved decision support system that utilizes an analysis program to generate the data of a markdown management report, classified in class 705, subclass 10.
  - IV. Claims 70-92, drawn to an improved decision support system that utilizes an analysis program to generate the data reported in bottom-up planning reports, classified in class 705, subclass 10.
  - V. Claims 93-115, drawn to an improved decision support system that utilizes an analysis program to generate promotional forward buying reports, classified in class 705, subclass 10.
  - VI. Claims 117-119, drawn to a calendar component that has a schedule of display fixtures at selling locations for goods, classified in class 705, subclass 8.

The inventions are distinct, each from the other because of the following reasons:

Art Unit: 3623

2. Inventions II-V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention II has separate utility such as determining required inventory levels to support the selling of a good, as compared to the budget levels. Invention III has separate utility such as analyzing the dates for markdowns to optimize timing and levels of markdowns. Invention IV has separate utility such as providing sales, inventory, and receipt information on a daily or weekly basis from the present until some point in the future. Invention V has separate utility such as considering desired inventory levels during a promotional period. Examiner further points out that on page 8 of the originally presented specification, Applicant states that presentation demand calendar table feeds a range of retail systems or a range of different activities within a system, where Open to Buy, Markdown, etc. are listed as separate systems or separate activities within a system. See MPEP § 806.05(d).
3. Claims 1-23 and 116 (Group I above) link inventions II-IV. The restriction requirement among the linked inventions is subject to the nonallowance of the linking claims, claims 1-23 and 116. Upon the allowance of the linking claims, the restriction requirement as to the linked inventions shall be withdrawn and any claims depending from or otherwise including all the limitations of the allowable linking claims will be entitled to examination in the instant application. Applicants are advised that if any such claims depending from or including all the limitations of the allowable linking claims is/are presented in a continuation or divisional application, the claims of the continuation or divisional application may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application. Where a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are

Art Unit: 3623

no longer applicable. *In re Ziegler*, 44 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971).

See also MPEP § 804.01.

4. Inventions I-V and VI are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require a schedule of display fixtures with fixture types and quantities found at selling locations. The subcombination has separate utility such as planning for the use and presence of different fixtures (i.e. rounds, shelves, etc) at a selling location (whereas Inventions I-V do not consider types of fixtures).

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not specifically required for all of groups II-V, the search required for Group II is not specifically required for Groups I and III-V, the search required for Group III is not specifically required for all of groups I-II and IV-V, the search required for Group IV is not specifically required for all of groups I-III and V, and the search required for Group V is not specifically required for all of groups I-IV, restriction for examination purposes as indicated is proper. Further, because inventions I-V and VI are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

6. A telephone call was not made to Applicant because the above restriction requirement is complex.

Art Unit: 3623

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*lwd*  
bvd

October 24, 2005

*Susanna M. Diaz*  
**SUSANNA M. DIAZ**  
**PRIMARY EXAMINER**  
*AU 3623*